

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL TPS ALLIANCE, et al.,

Plaintiffs,

v.

KRISTI NOEM, et al.,

Defendants.

Case No. 25-cv-01766-EMC (SK)

**SUPPLEMENTAL ORDER
REGARDING NON-RESPONSIVENESS**

Regarding Docket No. 211

This matter comes before the Undersigned on a longstanding discovery dispute regarding whether Defendants have improperly withheld documents as nonresponsive. (Dkt. Nos. 191, 211.)

BACKGROUND

On May 9, 2025, the District Judge ordered Defendants to produce documents “regarding whether to vacate, partially vacate, or terminate the TPS designations for Venezuela or Haiti” and “concerning the TPS periodic review process” as applied to those decisions, limited to certain custodians and time frames. (Dkt. Nos. 123, 132, 135.)

On June 10, 2025, the parties submitted a discovery letter brief regarding Plaintiffs’ concerns that Defendants had not complied with the required production order. (Dkt. No. 191.) As evidence of noncompliance, Plaintiffs cited (1) several prior instances in which Defendants mistakenly omitted certain documents from their initial production, (2) the fact that no documents were identified associated with Secretary of Homeland Security Kristi Noem or her senior advisor Corey Lewandowski—even though Lewandowski was the direct recipient of other email correspondence that Defendants had produced, and (3) the “strikingly few responsive documents” overall. (*Id.*; *see also* Dkt. No. 211-2.) Defendants maintained that they had fulfilled their discovery obligations. (Dkt. No. 191.) The Court denied without prejudice Plaintiffs’ request to compel Defendants’ to produce a “hit report” logging documents that hit on search terms but were

1 withheld as nonresponsive. (Dkt. No. 198.)

2 On June 20, 2025, the parties filed a new discovery letter brief regarding, among other
3 things, the non-responsiveness issue. (Dkt. No. 211.) In addition to the concerns discussed in the
4 prior discovery letter brief, Plaintiffs added that Defendants had not produced or logged any
5 communications regarding the Venezuela decision prior to the circulation of a draft Federal
6 Register notice, such that the decision “appear[s] to emerge from thin air.” (*Id.*) Defendants
7 provided that they were investigating whether they had searched and produced documents
8 custodial to Lewandowski and continued to oppose inquiry into their discovery methodology.
9 (*Id.*) The Undersigned ordered Defendants to produce a sample of documents withheld as
10 nonresponsive for *in camera* review. (Dkt. No. 210.) As directed, Defendants produced the
11 sample documents on July 3, 2025.

12 DISPOSITION

13 The Undersigned reviewed Defendants’ *in camera* production of 40 documents. The
14 following 16 documents are relevant to the agency’s decisions “to vacate, partially vacate, or
15 terminate the TPS designations for Venezuela or Haiti” or the related TPS periodic review
16 processes and were therefore misidentified as nonresponsive: NTPSA_USCIS_00000090,
17 00000179, 00000472, 00001597; NTPSA_DHS HQ_00000189, 00000406, 00000428, 00000431,
18 000000531, 000000544, 00000743, 00001217, 000001834, 000001977, 000002024, 000002598.

19 If Defendants believe any of these responsive documents are privileged, they shall produce
20 a corresponding privilege log by July 11, 2025. In doing so, Defendants are advised to be mindful
21 of the Undersigned’s prior guidance regarding the applications of various privileges and the level
22 of specificity required for privilege logs. Defendants must produce all non-privileged documents
23 by July 11, 2025.

24 In addition, the Undersigned is puzzled that NTPSA_USCIS_00000472 and 00001597
25 were withheld as nonresponsive. NTPSA_PRIVID_000164 contains a similar portion of the same
26 email chain, but Defendants logged NTPSA_PRIVID_000164 as responsive but attorney-client
27 privileged. The Undersigned rejected the invocation of the attorney-client privilege as to
28 NTPSA_PRIVID_000164. (Dkt. No. 222.) Defendants shall submit an explanation of why the

1 same email chain was categorized as both responsive and nonresponsive by July 11, 2025.

2 **IT IS SO ORDERED.**

3 Dated: July 8, 2025



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5 SALLIE KIM
United States Magistrate Judge
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